SUPREME COURT, U. S.

MAR 23 1967

JOHN F. DAVIS, CLERK

No. 1182

IN THE

# SUPREME COURT OF THE UNITED STATES.

STATE OF TENNESSEE, ex rel., etc.,
Appellants,

vs.

CITY OF CLARKSVILLE et al.,
Appellees.

On Appeal from the Supreme Court of the State of Tennessee.

## JURISDICTIONAL STATEMENT.

DENNEY, LEFTWICH, LACKEY & CHERNAU,
W. RAYMOND DENNEY,
STANLEY M. CHERNAU,
Nashville, Tennessee,

JAMES C. CUNNINGHAM,
CUNNINGHAM & MITCHELL,
Clarksville, Tennessee,

COLLIER GOODLETT, SR.,
GOODLETT & GOODLETT,
Clarksville, Tennessee,
Solicitors for Appellants.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101. CEntral 1-4477.



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IN THE

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vs.

CITY OF CLARKSVILLE et al.,
Appellees.

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On Appeal from the Supreme Court of the State of Tennessee.

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## JURISDICTIONAL STATEMENT.

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The appellants, The New Providence Utility District, The Edgoten Utility District, The Woodlawn Utility District, being public utility districts created and operating under statutes of the State of Tennessee, W. H. Burney, doing business as the W. H. Burney Trailer Courts, Morrison Estates, Day Development Company, Rose Hill Estates, Clay R. Caroland, Charles C. Gentry, A. J. Darnell, Houston Wade, T. W. Taylor, Donald W. Trice, Frank J. Graham, Mrs. C. T. Edgar, F. C. Ratchford, R. W. Ellis, A. C. Ausbrooks, E. L. Hodges, Graham R. Bryant, Steve L. Kondwros, B. B. Darden, Floyd Ferrell, Monroe Walker, Cecil Watson, Jesse Chandler, Jr., Harold A. Senseney, John T. Ervin, Elton Atkins, J. S. Holmes, Robert E. Clark, Robert E. Ashby, Joseph A. Nagey, N. E. Morgan, Billy Emmett, Dave W. Metcalfe, Orman Gray, C. C.

Walton, W. J. Pollard, Mrs. G. C. Adkins, James Lehman, James Morgan, Les Thebedeau, Richard A. Dewkes, Mrs. James Scott, and Ethridge Mann, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Tennessee dismissing appellants' bill, said judgment having been entered on December 20, 1966, and appellants having been granted a thirty-day extension from February 25, 1967, to and including March 27, 1967, to file the record and jurisdictional statement in this cause.

## CITATION TO OPINION BELOW.

The Supreme Court of Tennessee rendered a written Opinion, which was filed on November 14, 1966, and a petition to rehear was denied on December 20, 1966. Neither Opinion was reported officially. A copy of each Opinion is appended hereto and appears at pages 28 and 37 in the Appendix.

## JURISDICTION.

The judgment sought to be reviewed herein was rendered and entered on December 20, 1966. The jurisdiction of the Supreme Court of the United States to review the decision of the Tennessee Supreme Court by direct appeal is invoked under and conferred by Title 28, U. S. C. A., Section 1257 (2).

## QUESTIONS PRESENTED.

1) Did the Tennessee Supreme Court err in failing to find that the Ordinance adopted by the City of Clarksville, Tennessee, known as Ordinance No. 16-1964-65, entitled "An Ordinance to Annex Certain Territory and to Incorporate Same Within the Corporate Boundaries of the City of Clarksville", adopted under authority of Chapter 113 of the Tennessee Public Acts of 1955, as amended, Tennessee Code Annotated, Sections 6-309, et seq., violates

Article I, Section 10, of the United States Constitution, and impairs the obligations of the Contracts entered into between the three utility districts, parties complainant, and the bondholders of bonds issued by such districts, some of which are also parties complainant?

2) Did the Tennessee Supreme Court err in failing to find that the Ordinance above referred to, together with the Tennessee Statutes under which the same was adopted, violate the Fourteenth Amendment to the Constitution of the United States, in that they deprive the bondholders holding bonds issued by such utility districts, of their property and property rights without due process of law?

## STATUTES INVOLVED.

TCA-6-309, 6-310, and 6-318, made a part of the Appendix, at Pages 46-49.

Said Statutes referred to empower municipalities to incorporate other territory into the municipality without referendum to the citizens of the annexed area, which may be done by an incorporating municipality on its own initiative, by ordinance only, "when the territory will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered," unless said annexation is effected. There are certain limitations in regard to area and population not material here; the governing body of a municipality shall adopt a plan of service, setting forth the area to be incorporated; the projected timing of the municipal services to be furnished the annexed area; and providing that before such plan of service is adopted, it must have been submitted to a local Planning Commission.

## STATEMENT OF THE CASE.

Appellants, New Providence Utility District, Edgoten Utility District, and the Woodlawn Utility District, are nearby quasi municipal corporations to the appellee, City

of Clarksville. By municipal ordinance the City of Clarksville, Tennessee annexed a large territory contiguous to its municipal limits comprising an area of approximately 10.3 square miles, nearly fifty percent of which is devoted to agricultural purposes, and including approximately ten thousand residents under the authority of the Statutes heretofore referred to. This action was taken without referendum and over the protest of the three appellant utility districts, bondholders, and a large segment of the proposed annexed community.

The appellants filed their original bill in the Chancery Court of Montgomery County, Tennessee, in which they attacked the ordinance in question, on the grounds that said annexation ordinance may not reasonably be deemed necessary for the welfare of the residents of the affected territory and the municipality as a whole, and so constitutes an exercise of power not conferred by law; that the same was unreasonable and not within the power of the City to enact, was done capriciously, arbitrarily, oppressively, and illegally, in that the services that the appellee, City of Clarksville, could render were already being rendered by the Utility Districts in respect to water and sewerage, and the County was furnishing schools, police and highway services.

The appellee, City of Clarksville, provided a tax rate of $1.80 and did not propose to render any services that that Utility Districts and County were not rendering, but proposed to tax the people of the area, resulting in the collection of taxes but not in the improvement of the services which had been built out of funds provided by the Districts, either in loans or comparable rates to pay for the water and sewer systems installed in the area.

The original bill attacked the validity of the ordinance on the ground that it violated Article I, Section 10, and the Fourteenth Amendment to the Constitution of the United States (R. 20).

The question of whether or not the proposed annexation be unreasonable, considering the health, safety and welfare of the citizens and property owners in the proposed annexed area, is a "fairly debatable question." This is decision law and not provided for in the statute, and by such decisions the Courts of Tennessee have interposed "the burden on the protestants of showing that it is not 'fairly debatable'," and such decisions make such statute invalid and unconstitutional. **Morton v. Johnson City (1960)**, 206 Tenn. 411, 333 S. W. 2d 924; **Knoxville v. State ex rel. Graves (1960)**, 207 Tenn. 558, 341 S. W. 2d 718; **State ex rel. Campbell v. Morristown (1960)**, 207 Tenn. 593, 341 S. W. 2d 733; **State ex rel. Senff v. Columbia (1961)**, 208 Tenn. 59, 343 S. W. 2d 888.

Upon the trial of the case the Chancellor held, among other things, that the propriety of the annexation was a "fairly debatable" subject. The Trial Court stated in its Opinion that:

> "In the case at bar, there was testimony pro and con as to the advisability of the City annexing the proposed area, and as this Court views the decisions of our Supreme Court, it cannot weigh the evidence and determine where the preponderance of the evidence lies, but can only decide whether or not a debatable question is presented. There was testimony from both expert and lay witnesses that no adequate provisions are at the present made for police and fire protection, while, on the other hand, there is testimony that adequate provisions have been and are being made. Thus, it is clear that a debatable question exists, and that being the case, under the authority of Morton v. Johnson City, supra, it is the duty of this Court to so find. In most respects the question raised in the case at bar are identical with the Johnson City case, and the same reasoning applied in that case applies in this case" (R. 123-132).

The Trial Court dismissed appellants' bill and appellants' petition to rehear. On appeal the Supreme Court of Tennessee affirmed the Trial Court's judgment, and likewise denied the petition to rehear when the Court's attention was called to the fact that they had failed to pass upon the constitutional issues raised, and the Supreme Court filed an Opinion wherein it stated that the question of constitutionality of a statute "may be raised for the first time by a petition to rehear" (R. 176-178).

We should remind this Court that the Trial Court, in recognizing the question of whether or not the three ufility districts would continue to provide certain services or whether or not by negotiations between the utility districts and the City who would take over those facilities, in no way affects the validity of the annexation. The Trial Court makes no provision for any assurance that the City of Clarksville shall assume the operations and acquire the property of the utility districts and assume the debts of the utility districts, but simply states that the statue provides that the contract rights vested in the holders of outstanding bonds or other obligations shall be fully preserved, but it does not say "how, when or where," and the plan and the ordinance of annexation were both silent on the subject of "how, when, and where."

The statute provides that this annexation shall not impair the obligations of a contract, but neither the plan nor the judgments of the Court make any provision for the protection of those who hold contracts, such as bondholders and others. Actually, the City can proceed to collect taxes and leave the services to the utility districts who will pay for these services by high rates imposed upon the residents.

Following the Opinion of the Supreme Court of Tennessee on December 20, 1966, appellants on December 27, 1966 filed a motion with that Court to issue a Stay Order, alleging therein that the services of the three utility dis-

tricts, Edgoten, Woodlaw and New Providence, were being completely disrupted and no funds were being made available for operation, and that "the bondholders in these districts have no one to look to for the indebtedness owing them;" that the City of Clarksville had made no offer or overture for continuing the services, or any arrangement to take over the services and assume the bonds; that at that time there was no adequate water supply from the City of Clarksville to New Providence; that no one in authority, such as the Mayor of Clarksville, had conferred with the Commissioners of these utility districts to make an orderly transition between the four governments; that the citizens of these districts were frustrated, did not know to whom they should pay their utility bills, and that, in fact, forty of their customers resided beyond the territory annexed. Moreover, the eleven employees of the New Providence Utility District did not know their status or who would pay them; that the sole effort of the City of Clarksville in finalizing this transaction was to make it possible for them to assess taxes as of January 10, 1967; that the affected area to be assessed with taxes would have no assurance of any service, and, further, in relation to the matter, there are bonds for the sewer system outstanding in the sum of approximately a Million and one-half Dollars, and bonds outstanding on the water system of approximately an equal amount, with no provision suggested by the City of Clarksville to provide funds for the payment of interest on said bonds, and no provision for the utility districts to have any available revenue (R. 180-183).

The Tennessee Supreme Court denied the motion to stay, stating that it failed to see how appellants would be irreparably injured, and further that "the plan of the City is obvious in the event the judgment is stayed and the Supreme Court of the United States refuses to entertain the petitioner's appeal!" (R. 186). Actually, as shown in the Record, taxes are assessable as of January 10, 1967,

and the three appellant utility districts are maintaining the service now out of uncertain and nervous income, and from that date there will be a lien on the property of the residents in the annexed area for the collection of taxes.

## THE QUESTIONS ARE SUBSTANTIAL.

The Tennessee Supreme Court has decided an important question concerning the constitutional rights of certain citizens of Tennessee, which question has not been, but should be, settled by the Supreme Court of the United States. It is without contradiction that the City of Clarksville ordinance and resolution, and plan of services adopted by said resolution, did not provide for the assumption of the liabilities and obligations of the Edgoten and Woodlawn Utility Districts.

The ordinance adopted by the City of Clarksville, Tennessee, known as Ordinance No. 16-1964-65, entitled, "An Ordinance to Annex Certain Territory and to Incorporate Same Within the Corporate Boundaries of the City of Clarksville," which was adopted under authority of Chapter 113 of the Tennessee Public Acts of 1955, as amended, Tennessee Code Annotated, Sections 6-309, et seq., violates Article I, Section 10 of the United States Constitution, in that it impairs the obligation of the contracts entered into between the three utiilty districts, New Providence, Edgoten and Woodlawn, and the bondholders of bonds issued by such districts. The ordinance gives no enforceable legal right to the bondholders nor to the utility districts, Edgoten and Woodlawn, which obtain services from the New Providence Utility District, and further, the ordinance provides no plan for the services of these small districts which are now losing their source of water and sewerage services, and which will not have enough customers left to operate economically, and thus the customers in the Edgoten and Woodlawn Utility Districts will be completely deprived of these necessary services. There is no

provision in the ordinance or plan of service for a continuation of services to Edgoten and Woodlawn Utility Districts.

The resolution simply states that water services based on city rates will be provided within sixty days after legal incorporation of the utility district into the city system. There are three utility districts affected, and parts of the water lines and assets of the districts are included in the annexed area, while other parts of such lines and assets are outside of the area, the result being a severance of such districts.

The Contracts made by the districts with bondholders, as well as Contracts with all others dealing with the districts, will be impaired and rendered inoperative. The Contracts made by the districts to serve customers located outside of the annexed area, cannot be fulfilled since the districts cannot continue to serve such customers under rates provided for retirement and payment of bonds issued to finance such systems.

Your appellants respectfully insist that the bonds which constitute a certificate of indebtedness are jeopardized and that the Ordinance and Resolution and the plan of services adopted by the annexing municipality does not even mention the Edgoten and Woodlawn Utility Districts. No obligation is placed on Clarksville to protect the Edgoten and Woodlawn Utility Districts.

Your appellants are aware that the enlargement of cities by annexation of additional territory is exclusively a State matter, but in this case the bondholders of Edgoten and Woodlawn Utility Districts cannot be considered protected by the Tennessee Statute, which states that contracts shall not be impaired, when, in fact, the Edgoten and Woodlawn Districts, which obtain their entire supply of water from the New Providence District and who are entirely dependent upon the New Providence District, are not in-

cluded, in any manner, in the process effectuating annexation.

Tennessee Code Annotated, Section 6-318, states in part that:

> "If the annexed territory is then being provided with a utility service by a state instrumentality which has outstanding bonds or other obligations payable from the revenues derived from the sale of such utility service, the agreement or arbitration award referred to above shall also provide (a) that the municipality will operate the utility property in such territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obligations, or (b) that the municipality will assume the operation of the entire utility system of such state instrumentality and the payment of such bonds or other obligations in accordance with their terms. Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations."

Is this Statute, however, made constitutional by the Legislature simply stating that the annexation shall not impair the obligation of contracts? Does this provision of the Tennessee Code Annotated, in and of itself, render the Statute constitutional, when in fact the action taken by the City in this annexation process does in fact impair the contracts of the utility districts?

It is respectfully submitted that the mere provision of the Statute does not in itself make the Statute constitutional, but rather the effect of the statute, legislative act or ordinance, determines its constitutionality, and mere words incorporated in the statute prohibiting impairment certainly cannot prevent the statute or ordinance from effectively impairing contracts, if, in fact, that is the effect brought about by the annexation process.

In addition, the bondholders holding bonds issued by the utility districts are deprived of their property and property rights without due process of law, and in violation of the Fourteenth Amendment to the Constitution of the United States.

The Tennessee annexation statute provides that in testing the validity of the annexation the question is whether or not the proposed annexation be unreasonable, in considering the health, safety and welfare of the citizens and property owners in the proposed annexed area. The case law of Tennessee has placed the burden on the protestants of annexation to show that the proposed annexation does not create a "fairly debatable" question.

The Tennessee Supreme Court has stated many times that they will not review questions of justice of annexation proceedings, adaptability of territory annexed, or propriety of annexing it, so long as the legal requirements are carried out and the act is done within the constitutional provisions. They have held that the main issue in these annexation suits is not whether or not the ordinance annexing property was reasonable or unreasonable, but rather whether or not it is a "fairly debatable" question as to whether or not the ordinance is reasonable or unreasonable (See cases, supra).

A protestant of annexation, by the mere fact that he protests, creates a debatable question and, therefore, he who protests annexation, by virtue of his protesting, creates the question that in effect precludes him from having the Court undertake the duty of judging the constitutionality of the annexation.

By causing the determinative question to be whether or not a "debatable question" exists, prohibits a protestant from having any determination as to whether or not the legal requirements of annexation are, in fact, carried out.

No such burden is put upon a protestant anywhere else in the law of the land, and such a burden is unfair, arbitrary and unreasonable. A protestant of annexation, under the decisions of Tennessee, is penalized by reason of his very protestation.

## CONCLUSION.

For the reasons stated, appellants submit, and it is respectfully urged, that the sound administration of justice supports the conclusion that the annexation ordinance referred to herein violates the provisions of the United States Constitution.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

DENNEY, LEFTWICH, LACKEY & CHERNAU,

W. RAYMOND DENNEY,

STANLEY M. CHERNAU,
Nashville, Tennessee,

JAMES C. CUNNINGHAM,

CUNNINGHAM & MITCHELL,
Clarksville, Tennessee,

COLLIER GOODLETT, SR.,

GOODLETT & GOODLETT,
Clarksville, Tennessee,
Solicitors for Appellants.

March 17, 1967.

**Certificate of Service.**

I, Stanley M. Chernau, one of the Solicitors for Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that copies of the foregoing Jurisdictional Statement and Appendices were this day served on adverse parties herein, in accordance with Supreme Court Rules 33 and 13, by personally delivering and depositing the same with Edwin F. Hunt, Boult, Hunt, Cummings & Connors, Nashville, Tennessee, and Frank J. Runyon, Runyon & Runyon, Clarksville, Tennessee.

Stanley M. Chernau.

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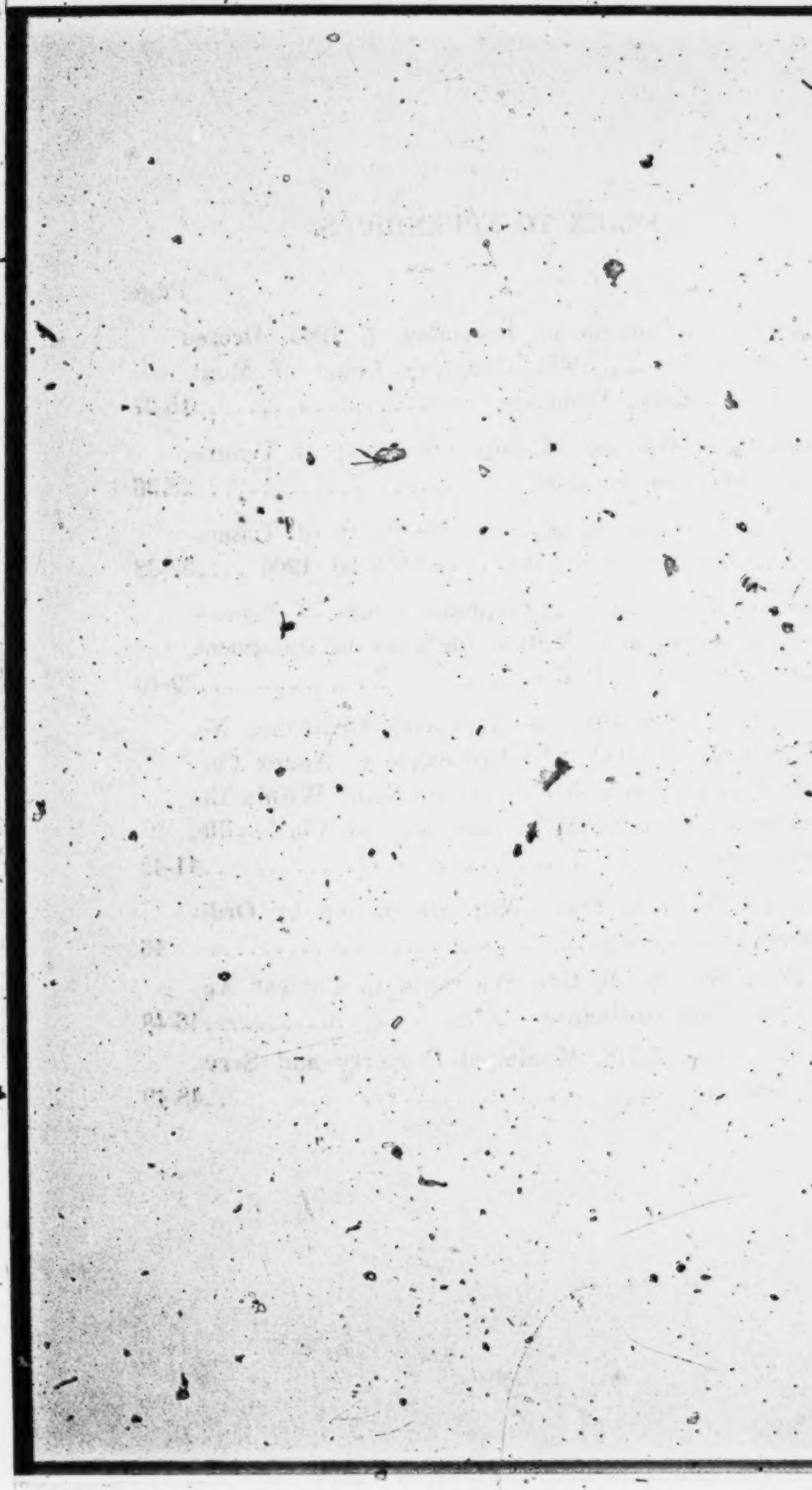
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## APPENDIX A.

### Opinion of Chancery Court of Montgomery County, Tennessee, Filed December 4, 1965.

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| State of Tennessee ex rel. the New Providence Utility District et al.<br>vs.<br>City of Clarksville et al. | In the Chancery Court for Montgomery County, Tennessee. |

**Memorandum Opinion Filed: December 4, 1965.**

The original bill in this cause was filed by a number of citizens of Montgomery County, Tennessee, contesting the validity of an Ordinance adopted by the Board of Mayor and Aldermen of the City of Clarksville whereby a large area known as the New Providence community was annexed under the provisions of Section 6-309, T. C. A. et seq. Complainants are residents of the area and are affected by the Ordinance and under the provisions of Section 6-310, T. C. A., have such interest as to entitle them to question the validity of the Ordinance.

The original bill raises a number of questions, however, the main issues to be decided are as follows:

1. Did the Board of Mayor and Aldermen in passing said Ordinance act arbitrarily, capriciously, and without discretion?

2. Was the plan of service in conformity with the statutory requirements of the 1961 Amendment to the general annexation statutes?

The undisputed facts with reference to the growth of the City of Clarksville and the annexed area are:

Since World War II, Clarksville and the adjacent areas have experienced a phenomenal growth, and this is especially true of the New Providence area which lies North of the City Limits of the City of Clarksville and is between the City and Fort Campbell. In recent years numerous subdivisions have been developed in the area and, in fact, the area has become an urban area. To meet the problems presented by this population growth, utility districts have been formed to provide electric and water services. Within the corporate limits of the City of Clarksville there has also been a tremendous industrial and population growth, and any future growth of the City must be beyond its present City Limits.

The statutes relating to annexation of adjacent territory by a municipality provides that the municipality may:

". . . upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered after notice and public hearing by Ordinance, may extend its Corporate Limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole, provided said Ordinance shall not become operative until thirty (30) days after final passage thereof.

Provided, however, that before any territory more than one-fourth (¼) square mile in area or having a population of more than five hundred (500) persons may be annexed under this section, the governing body of the municipality shall adopt a plan of service setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory proposed to be annexed.

Provided, further that before any such plan of service shall be adopted, it must have been submitted to the local planning commission, if there be such, for a study and a written report to be rendered within ninety (90) days after such submission, unless, by resolution of the governing body, a longer period of time is allowed."

That portion of the above quoted statute relating to the study and proposed plan of services is the 1961 Amendment, and just what is required under this Amendment has not heretofore been discussed by our Courts. The other sections have all been fully considered in the cases cited by Counsel in the excellent briefs that have been furnished by both parties.

In this Memorandum the Court will discuss the questions involved in the reverse order, discussing first the procedural questions and the sufficiency of the study made.

It is unnecessary to discuss at length just what steps were taken prior to the adoption of the Ordinance, other than to say that for a number of years the question of whether or not the New Providence Area should be annexed by the City of Clarksville has been considered, and in 1960 a study was made of a smaller area than that made in 1964 and included in the Annexation Ordinance of December 4, 1964. In 1964, a detailed study of the annexed area was made by Mr. Edward W. Castellani, who was at that time Director of the Clarksville-Montgomery County Regional Planning Commission. The proof shows that Mr. Castellani in making this study was not acting in his capacity as the Director of the Clarksville-Montgomery County Regional Planning Commission. The original bill in this cause questions the right of Mr. Castellani to make the study.

A careful reading of the Amendment of 1961 shows that no particular form is required for the proposed plan of services nor is there anything in the Act which would have prohibited the Director of the Planning Commission in his official capacity at the request of the Board of Mayor and Aldermen of the City of Clarksville to make the study and present the needs as disclosed by his study to the Planning Commission and then adopt a plan of services consistent with that study and as recommended by the Planning Commission. The Court has carefully gone over the "Proposed Plan of Services for New Providence Annexation Area" which is Exhibit "B" to the original bill and also an exhibit to the testimony introduced by agreement, and finds same to be an exhaustive report of needs as found by the study, and that the Minutes of the Planning Commission shows that the proposed plan was considered by the Planning Commission, and that the Commission approved the plan and forwarded same to the Board of Mayor and Aldermen with a certified copy of the Minutes of the Planning Commission showing its approval. All of this is in writing, and in the Court's opinion constitutes "a written report" as contemplated by the 1961 Amendment. The Court is of the opinion that the 1961 Amendment was enacted by the Legislature to insure that careful consideration be given as to the needs of the Municipality and the area to be annexed, and to insure deliberation and consideration of all debatable questions by the Legislative body. The testimony and the exhibits show that the study of the needs and the proposed plan of services were so considered by both the Board of Mayor and Aldermen and the Planning Commission, and while there was a difference of opinion as to the needs, a majority of both Legislative bodies voted in favor of the proposed plan. The Court is of the opinion that the Resolution passed by the Board of Mayor and Aldermen and the subsequent action of the Planning Commission as shown by its Minutes complies with the requirements

of the 1961 Amendment. When the Minutes of the Planning Commission show that the plan of services was considered and approved, and that a copy of those Minutes were delivered to the Board of Mayor and Aldermen, it was, in the opinion of the Court, a written report the same as if a separate writing signed by the members of the Planning Commission had been made.

The record also shows that a public hearing was had and that both proponents and opponents of the annexation appeared and were heard. This is a legislative function and the arguments and reasons advanced by those appearing may or may not have been sound. The Court will take judicial knowledge of the fact that Legislators, both State and National, often present arguments in support of their particular positions which would appear to this Court as being immaterial or even improper, but these are questions that address themselves to the legislative forum and not the Courts.

In Morton v. Johnson City, 206 Tenn. 411, 333 S. W. 2d 924, the Supreme Court for Tennessee discussed at length the question of a "public hearing", and, among other things, said:

> "In other words, the only question and the only requirement under this Statute is that it be public; that the City Commission have an open public hearing so that they can hear those who are for or against the proposition and then make up their own minds from a legislative standpoint of whether or not such an Ordinance would be feasible in view of their legislative duty to the City."

And, again:

> "It might have been politically expedient for the Commissioners to have the meeting in a larger room and to do this or that, but that is not a question for

the Court. The only question for the Court is whether or not it was open so that they could come and express themselves. Clearly as a matter of law this was such a meeting." (Emphasis added.)

From a careful review of the record, the Court is of the opinion that the procedure required by the Annexation Statute, including the 1961 Amendment, was followed by the City of Clarksville in passing the Ordinance under consideration.

This brings us to the question: "Did the Board of Mayor and Aldermen in passing said Ordinance act arbitrarily, capriciously, and without discretion?"

Complainants have presented to the Court an excellent brief and argument wherein it is insisted that the limitations placed on a trial court in Morton v. Johnson City, supra, go too far and that there is a material difference between the language of the Statute:

> ". . . that the prosperity of such municipality and territory will be **materially retarded** and the safety and welfare of the inhabitants and prosperity thereof endangered,"

if the area is not annexed and the term,

> ". . . may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole."

With this position, the Court is unable to agree. The first portion of the Statute has reference to the effect upon the Municipality and the annexed territory in the event no action is taken. In other words, the Act is saying that the legislative body should consider what adverse conditions would result from a failure to act, and to consider what benefits would follow affirmative action. It follows as a matter of logic that if by affirmative action the

"safety and welfare" of the community would be benefited, then by failure to act "the safety and welfare" would be endangered. It appears to the Court that the legislative body is required by the Statute to consider the effects of both positive and negative action, and to then act or fail to act as in its discretion is best for the community.

In State ex rel. v. City of Columbia, 208 Tenn. 59, 343 S. W. 2d 888, the Supreme Court said:

> "(1) To all intents and purposes the questions involved here are identical to those involved in Morton v. Johnson City, supra. The record presenting the question as to the reasonableness or unreasonableness is only about one-third as large as the record was in the Johnson City case, but essentially the proof pro and con is identical. We find as we did in the Johnson City case that the record herein unquestionably presents a question that was reasonably debatable. Our conclusion under this statement of facts is that the Ordinance was reasonable rather than unreasonable.
>
> There are two or three questions raised here, though some of them are very similar, but presenting a different aspect, that were not raised in the Johnson City case. We will answer these questions herein, but **insofar as any question that is attempted to be argued herein one way or the other that was sufficiently answered in the Johnson City case, we will not attempt to again answer, because that is the opinion of this Court.**" (Emphasis added.)

In the case at bar, there was testimony pro and con as to the advisability of the City annexing the proposed area, and as this Court views the decisions of our Supreme Court, it cannot weigh the evidence and determine where the preponderance of the evidence lies, but can only decide whether or not a debatable question is presented.

There was testimony from both expert and lay witnesses that no adequate provisions are at the present made for police and fire protection, while, on the other hand, there is testimony that adequate provisions have been and are being made. Thus, it is clear that a debatable question exists, and that being the case, under the authority of Morton v. Johnson City, supra, it is the duty of this Court to so find. In most respects the questions raised in the case at bar are identical with the Johnson City case, and the same reasoning applied in that case applies in this case.

During the trial of the case, this Court expressed some concern about the inclusion of two large agricultural areas in the annexed area. Whether or not the Cunningham tract should have been included certainly presents a debatable question, there being proof that on all sides there are developments and that the surrounding territory is an urban area. Thus, whether or not the inclusion of this farm is for the prosperity and welfare of both the municipality and the surrounding area is a debatable question and therefore a legislative and not a judicial question.

As the writer of this Opinion interprets the decisions on the question of annexation, this Court must look at the question the same as if the Legislature had itself made the annexation. In State ex rel. v. City of Columbia, 208 Tenn. 59, 343 S. W. 2d 888, the Court said:

"In the outset it might not be amiss to say that annexation by City ordinance under this statute contains no trick or gimmick. It is just the Legislature conferring the right upon the City fathers to annex under the conditions prescribed in the statute. This right of annexation, aside from the statute, would be in the Legislature, and the Legislature having the right to annex has likewise the right to confer this power upon the City fathers, and it seems to us per-

fectly obvious that the City fathers know far more about the needs and necessity of annexation than would the Legislature. The reasons therefor are so obvious that it isn't necessary for us to express them. This being true, such an annexation, so long as it complies with the statute, has the same force and effect and is subject to the same attacks only as annexation would if done by the Legislature."

In annexing territory someone must fix the boundaries, and whether by the annexation statutes contained in Section 6-309, T. C. A., et seq., or by the Legislature itself, that is a legislative matter and will not be disturbed by the Courts unless the action was arbitrary and unreasonable, and if it is a debatable question the Courts will rule in favor of the annexation. A map was introduced showing the annexed area, and this map shows that certain areas are either vacant or presently used for agricultural purposes. The question, however, is not whether the annexed area is presently developed, but whether or not because of its location and general character it is adaptable for development and can within a reasonable time be so developed.

With reference to that portion of the Darnell farm included in the annexation, Mr. Castellani testified as follows:

"Q. . . . Is it reasonable, in your opinion, for this large area, let us say 750 acres, which is used, and whether or not you have seen it or not, as far as actually being over it, whether or not it is reasonable to include that area in this entire annexed area?

A. I would say, yes, it was because large parts of these areas, if you will notice the map, large parts of these areas in all directions; it doesn't make any difference which way you go in this annexed area, are completely surrounded to (by) or in between develop-

ment which has already occurred. . . . . So, I would say that in most cases in these areas, these areas that have been developed, that most of the areas are reasonable because I think that they will be changed from farm land, of course, this depends upon the individual desires of the owners, but I would say that most of the farm land will quickly go within five years at least, possibly less, into predominantly residential and urban uses.

Since this map has been done, we have had other developments already occurring."

Mr. Robert Loveless, an expert in the field of municipal planning, testified at length as to the feasibility and advisability of annexing the area as shown on the map. With reference to that portion of the Darnell farm included, he stated:

"To answer your question, yes, I think it is a legitimate inclusion in the annexation."

The Court is therefore of the opinion that whether or not the inclusion of these vacant or agricultural areas is reasonable is a debatable question, and therefore a legislative and not a judicial question.

In incorporating a previously unincorporated area, or in the annexation of an area by an existing corporation, it would be impossible to provide for any and all problems with which the legislative branch of the government would have to meet, and the Courts will therefore presume that as each problem arises, the Board of Mayor and Aldermen will perform their duty, and this is especially true as regards the temporary use that is being made of any of the annexed areas, and that the City by proper legislation will permit such use as is being made of certain areas so long as that use does not adversely affect the safety and health of the community as a whole. Even in the absence

of annexation, uses by private individuals of their property which is inconsistent with the health and safety of the public in general can be prohibited. The Court finds nothing in the Ordinance of the City of Clarksville regulating the ownership of animals and fowls that would violate the constitutional rights of the owners of any of the lands included in the annexed area.

The question of representation by the citizens of the annexed area has been decided by our Supreme Court in City of Knoxville v. Graves, 207 Tenn. 558, 341 S. W. 2d 718, and State v. City of Columbia, 210 Tenn. 514, 360 S. W. 2d 39.

The question of whether or not the three utility districts now providing certain services to the annexed area will continue to provide those services, or whether or not by negotiations between the utility districts and the City those facilities will be taken over by the City in no way affects the validity of the annexation. This is just one of the problems that constantly confront the expanding urban and industrial growth of the country, and the Court can only assume that the City fathers will meet these problems and solve them in a legal and constitutional manner.

It therefore results that the Court finds the Ordinance valid, and Complainant's bill is dismissed.

A decree in accordance with this Memorandum will be prepared and presented to the undersigned for approval and entry on the Minutes of the Court, and this Memorandum will be filed as a part of the technical record, but need not be copied on the Minutes.

This the 4th day of December, 1965.

W. M. Leech,
Chancellor.

Decree of Chancery Court of Montgomery County, Tennessee.

Filed December 23, 1965.

State of Tennessee, ex rel. The New Providence Utility District, et al.,

vs.

City of Clarksville, et al.

**Final Decree.**

This cause came on for hearing on June 22, 1965, a subsequent days of the term upon the entire record, up oral testimony of witnesses in open Court after the d mand for jury trial has been waived, and upon the brie and arguments of counsel, from all of which the Cou is of the opinion, for reasons set forth in a Memorandu filed December 4, 1965, that the contested ordinance a nexing to the City of Clarksville a large area known the New Providence community, and more fully describe in said ordinance, is valid and in compliance with a plicable statutes;

It is therefore, Ordered, Adjudged and Decreed th the annexation ordinance passed by the City of Clark ville with reference to a large area known as the Ne Providence community and more fully described in t ordinance is hereby declared valid and in compliance wi Sections 6-309 and 6-310, Tennessee Code Annotated, amended; that the Memorandum Opinion filed Decemb 4, 1965 be made a part of the record, that the suit dismissed; and that petitioners and their sureties pay t costs, for which execution may issue if necessary.

To the foregoing decree petitioners except and pray an appeal to the next term of the Supreme Court at Nashville which appeal is granted upon their giving a sufficient appeal bond, and upon their giving said bond as provided by law, the petitioners are allowed sixty days in which to prepare and file their bill of exceptions and otherwise perfect their appeal.

This December 23, 1965.

/s/ W. M. Leech,
Chancellor.

## APPENDIX B.

### Opinion of Supreme Court of Tennessee.

Filed November 14, 1966.

| | |
|---|---|
| State of Tennessee, ex rel., The New Providence Utility District, et al., Appellants, vs. City of Clarksville, et al., Appellees. | Montgomery Equity. Honorable W. M. Leech, Chancellor. |

For Appellants: James C. Cunningham, Cunningham & Mitchell, Clarksville, Tennessee; Collier Goodlett, Sr., Goodlett & Goodlett, Clarksville, Tennessee; W. Raymond Denny, Denny, Leftwich and Lackey, Nashville, Tennessee.

For Appellees: Frank J. Runyon, Runyon & Runyon, Clarksville, Tennessee; Edwin F. Hunt, Boult, Hunt, Cummings and Conners, Nashville, Tennessee.

### Opinion.

Appellants have appealed to this Court from an adverse decree of the Chancery Court of Montgomery County upholding the validity of an annexation ordinance of the City of Clarksville.

The area sought to be annexed is known as The New Providence Community. Basically, the land lies between and contiguous to the northwestern boundary of Clarksville and the southern boundary of Fort Campbell, a military base; and on either side of both the main high-

way, U. S. 41-A, connecting Clarksville with Fort Campbell, and highway U. S. 79 West.

The area contains approximately 6,596 acres, or ten and three-tenth square miles, devoted to business, residential, farming and industrial uses. It is estimated that between eight thousand and nine thousand people reside in the area.

Many subdivisions are being developed in the area although there are also some large and small farms therein having acreages from twenty to seven hundred fifty acres.

The area has been the subject of two annexation studies: in February, 1960, and October, 1964; both of which resulted in recommendations of annexation to the City of Clarksville.

These studies included analysis of the service needs of the area as to water, sewage, gas, electricity, fire and police protection, street lighting, parks or recreational grounds, traffic control, zoning, governmental administration, and school services.

The plan of services filed with the City of Clarksville in October 1964 was the result of a study made by Mr. Edward Castellani and Mr. Don Pruitt employed by the City to make the study and to prepare a proposed plan of services.

The report and plan of services prepared by these gentlemen revealed the area depends upon the City of Clarksville for its gas and public transportation, upon an electric membership corporation for its electric power and upon three separate utility districts for its water.

Other services proposed by the plan are to be furnished by the City upon annexation of the area or shortly thereafter.

The report and plan of services were submitted to the Regional Planning Commission. This Commission consists of eight members. The Mayor of Clarksville and the County Judge of Montgomery County are ex officio members. The Mayor appoints four members and the County Judge appoints four members from the county.

The Commission considered the proposed plan of services at a meeting on October 15, 1964. The Commission unanimously adopted a resolution in which it was stated the plan was reviewed, analyzed and discussed in its entirety and recommended the plan to the City Council of Clarksville, "as being technically and financially feasible, within the scope of the available information, provided certification is submitted regarding certain estimates made in said plan * * *."

On October 16, 1964, the City Council passed a resolution which provided for a public hearing on the question of the proposed annexation of the area. Notice of the hearing was published in a local newspaper on October 22, 1964. The hearing was held on November 5, 1964.

At the hearing, the Mayor of the City of Clarksville stated in the event the ordinance was passed and the area annexed, the farm land therein would be assessed at $1.00 per acre.

By appellants' first assignment of error it is insisted there is no plan of services as required by T. C. A. Section 6-309, since the record shows without dispute that each of the three public utility districts furnishing water to the area had outstanding bonds and other contractual obligations and the plan does not set out what shall be done by the City with respect to such services in the event of annexation.

The Chancellor held that whether the three water utility districts continued to provide services to the annexed area

or whether the utility districts were acquired by the City, "in no way affects the validity of the annexation."

In view of T. C. A. Section 6-318, we think the Chancellor was correct in his finding. This Section provides in part:

> "Upon adoption of an annexation ordinance • • • an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, • • • shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances • • •. The annexing municipality, if and to the extent that it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, notwithstanding Section 6-2607 or any other statute. Subject to such exclusive right any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the State of Tennessee effective at the time of submission to the arbitrators • • •.
>
> "If the annexed territory is then being provided with a utility service by a state instrumentality which has outstanding bonds or other obligations payable from the revenues derived from the sale of such utility service, the agreement or arbitration award referred to above shall also provide (a) that the municipality will operate the utility property in such territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obliga-

tions, or (b) that the municipality will assume the operation of the entire utility system of such state instrumentality and the payment of such bonds or other obligations in accordance with their terms. Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations."

It is clear a municipality has the paramount right and duty to provide utility services to its inhabitants. Obviously, a municipality does not acquire the right or duty to negotiate or arbitrate with the utility furnishing services to an area sought to be annexed to the City until the annexation of such an area is completed.

In the event the City assumes to operate the utility, it must also assume the responsibility to pay its bonds and other contractual obligations.

Thus, the statute fully protects the rights of utility districts and their creditors.

Moreover, it should be noted that the plan of services and the report of the annexation study show the following respectively:

"In order to render service comparable to that now provided in the City, acquisition of the New Providence Utility District by the City is suggested. That portion of New Providence that is not served by a sanitary sewer will need to be furnished this service as soon as possible.

"Water services based on city rates will be provided within sixty (60) days after legal incorporation of the utility district into the City's system."

Appellants' second assignment of error contends the Chancellor erred in failing to find the statement of Mayor

Charles Crowe, made at the public hearing to the effect all farm land annexed would be assessed for city tax purposes at $1.00 an acre, caused or influenced the City Council to arbitrarily pass the annexation ordinance.

A transcript of the proceedings at the public hearing is filed as an exhibit in the record and shows the Mayor, in answer to a question of a citizen from the floor, admitted his statement could not be taken as binding on the City. Furthermore, one of the Attorneys for appellants pointed out to those participating in the hearing the statement could not bind the City.

We think the members of the City Council were reasonable men and were aware such a statement could not bind the City.

There is no proof that we can find in the record that the statement of the Mayor caused or influenced the Council to vote for the annexation ordinance. To sustain appellants' assignment we would have to do so on surmise and conjecture.

There is always a presumption in favor of the validity of an ordinance or statute, and those who question its validity have the burden of proof. State v. City of Columbia, 208 Tenn. 59, 343 S. W. 2d 888 (1961).

The third assignment contends the plan of services did not comply with the following provision of T. C. A. 6-309:

> "Provided, however, that before any territory more than one-fourth (¼) of a square mile in area, or having a population of more than five hundred (500) persons, may be annexed under this Section the governing body of the municipality shall adopt a plan of services setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory proposed to be annexed."

It is argued the plan of services is too meager and insufficient to meet the requirements of the statute; it being insisted no mention is made as to whether the City will assume the obligations of the three water utility districts within the area, nor does the plan provide for negotiation or agreement with the Cumberland Electric Membership Corporation, which furnishes electric power in the area sought to be annexed to compensate it for loss of customers by reason of the annexation.

It is further argued that there is nothing in the plan nor in the testimony, reflecting any investigation or consideration of these matters.

We are of the opinion from a thorough examination of the record that there is no merit in this assignment.

The plan of services sets forth when and how the area will be furnished water service, fire and police protection, street maintenance and repair, street lighting, a recreational program and other services.

With respect to negotiations with the water and electric utility districts, we pointed out in our consideration of appellants' first assignment of error such negotiations would have to be made after the annexation was completed.

The presumption is the proper officials of the City will do their duty and negotiate with the utilities as provided by T. C. A. Section 6-318.

Moreover, we do not think the purpose of the provision of the statute under consideration requires the City to adopt a final and specific contract with utility districts prior to annexation and set such forth in the plan of services.

The record further shows the chief engineer of the Cumberland Electric Membership Corporation testified he

understood the utility had the alternative of continuing electric service to the area at City rates or its facilities be sold to Clarksville Electric Department.

It is finally insisted the City did not comply with the following provision of T. C. A., Section 6-309:

> "Provided further, that before any such plan of service shall be adopted, it must have submitted to the local planning commission, if there be such, for study and a written report, to be rendered within ninety (90) days after such submission unless by resolution of the governing body a longer period is allowed."

In support of this assignment, it is argued the mere approval of the plan of services by the Planning Commission by a resolution, and a certified copy of such resolution submitted to the City Council, does not comply with the requirement of the statute that a written report of the Commission's study of the plan be furnished the City.

It is the insistence of appellants the written report requirement contemplates a detailed statement, "of all circumstances and conditions pertaining to the area to be annexed," and the effect same might have on citizens of the City and the area sought to be annexed.

The submission of the plan of services to the Planning Commission and its report to the legislative body of the municipality is part of the legislative process. The form and sufficiency of the report is a matter for determination by the legislative body and not the courts.

The Planning Commission had the alternative of approving, modifying or rejecting the plan of services submitted to it for study. That body adopted the resolution approving the plan and so reported to the City Council

by a certified copy of the resolution. There is nothing in the statute that requires the Planning Commission to report to the City Council its findings in any particular form.

For the foregoing reasons, we conclude that all of the statutory requirements were complied with in the passage of the ordinance; and the City Council did not act arbitrarily in adopting it.

All assignments are overruled and the decree of the Chancellor is affirmed at the cost of the appellants.

Chester C. Chattin,
Justice.

Burnett, C. J.,
Dyer and Creson, JJ,
and Harbison, S. J., Concur.

## APPENDIX C.

### Opinion of Supreme Court of Tennessee on Petition to Rehear, Filed December 20, 1966.

State of Tennessee, ex rel. The New Providence Utility District et al.,
Petitioners,
vs.
City of Clarksville, et al.,
Respondents.
} Montgomery Equity.

**On Petition to Rehear.**

Petitioners, appellants in this Court, have filed a petition to rehear in which it is urged we failed to consider and pass upon the insistence of petitioners that the annexation ordinance violates Article 1, Section 10 of the United States Constitution, in that it impairs the obligations of the contracts entered into between the three Utility Districts, parties complainant and bondholders of the Utility Districts; and that the ordinance violates the due process clause of the Constitution of the United States, in that it deprives the bondholders of the Utility Districts of their property and property rights without due process of law.

We see no merit in the petition. The ordinance was passed under authority of T. C. A., Section 6-309, et seq. T. C. A., Sections 6-318 and 6-319 fully protects the rights and provide the remedies of the Utility Districts, their creditors and bondholders, upon the completion of the annexation. Thus, the ordinance does not impair the obligations of a contract or deprive petitioners of their property without due process of law.

Petitioners admit in their brief in support of the petition to rehear that they did not assign an error in this Court the failure of the Chancellor to pass on the constitutionality of the ordinance.

Petitioners' brief in support of the petition to rehear merely points to the fact this Court has not passed upon the constitutionality of an annexation ordinance on the grounds it impaired the obligations of a contract and violated due process. Petitioners do not point out in what respect the ordinance violates these constitutional provisions.

Although the question of constitutionality may be raised for the first time by the petition to rehear, those attacking the constitutionality of an ordinance or legislative act at such stage in the litigation have a heavy duty of showing wherein it contravenes the constitutional provisions relied upon. Vickers v. State, 176 Tenn. 415, 145 S. W. (2d) 768 (1940). Petitioners have failed to carry this burden.

It is our opinion the ordinance is a constitutional enactment.

The petition to rehear is denied.

Chester C. Chattin,
Justice.

## APPENDIX D.

Opinion of Supreme Court of Tennessee on Appellants' Motion for Stay of Judgment, Filed January 3, 1967.

State of Tennessee, ex rel. The New Providence Utility District, et al., Petitioners,

vs.

City of Clarksville, et al., Respondents.

Montgomery Equity.

### Memorandum on Motion to Stay.

Petitioners have filed a motion in this Court to stay the judgment of this Court rendered on December 20, 1966, pending appeal to the Supreme Court of the United States.

The motion was orally argued before the undersigned, an Associate Justice of the Court, on December 27, 1966.

This Court released its original opinion in this matter on November 14, 1966. Petitioners filed a petition to rehear which was denied.

The action of this Court in annexation cases is made final by the express provisions of T. C. A., Section 6-310.

We have heretofore denied a motion to stay the judgment of this Court pending an appeal to the Supreme Court of the United States in annexation cases. State v. City of Knoxville, 211 Tenn. 428, 365 S. W. (2d) 433 (1963).

It is argued in the motion for stay of the judgment, "petitioners will be irreparably injured during the pendency of the case in the Supreme Court, in that if the

judgment is not stayed, the three utility districts, Edgerton, Woodlawn and New Providence, will be completely disrupted for service."

But, as we stated in our original opinion, the annexation statute fully protects the rights of these petitioners, their creditors and bondholders upon completion of the annexation. Thus, the argument is not supported by the record.

It is also argued the City will assess the annexed property for taxation on January 10, 1967, and the affected area will then be assessed with taxes without any assurance of any municipal service.

The assessment of taxes does not mean they become due and payable at that time. It is not shown when they will become due and payable.

The record shows the City of Clarksville adopted a plan of services prior to the enactment of the ordinance. The plan was submitted to the Regional Planning Commission and approved by the Commission. The plan of services sets forth when and how the services will be furnished.

I fail to see how petitioners will be irreparably injured by denial of the motion to stay.

On the other hand, the plight of the City is obvious in the event the judgment is stayed and the Supreme Court of the United States refuses to entertain petitioners' appeal shortly after January 10, 1967.

For the foregoing reasons, the motion to stay the judgment in this Court is denied.

Chester C. Chattin,
Justice.

## APPENDIX E.

### The City of Clarksville, Tennessee, Ordinance No. 16-1964-65.

Legal Notices.

Ordinance 16-1964-65

An Ordinance to Annex Certain Territory and to Incorporate Same Within the Corporate Boundaries of the City of Clarksville, Tennessee.

Whereas, a public hearing before this body was held on the 5th day of November, 1964, pursuant to a resolution adopted on October 16, 1964, and notice thereof published in the Clarksville Leaf Chronicle on October 22, 1964; and

Whereas, it now appears that the prosperity of this city and of the territory herein described will be materially retarded and the safety and welfare of the inhabitants and the property thereof endangered if such territory is not annexed; and

Whereas, the annexation of such territory is deemed necessary for the welfare of the residents and property owners thereof and of this city as a whole; and

Whereas, a plan of service for this area was adopted by resolution on November 4, 1964, as required by Section 6-308 to 6-319, Tennessee Code Annotated;

Now, Therefore Be It Ordained by the City of Clarksville:

Section 1. Pursuant to authority conferred by Sections 6-308 to 6-319, Tennessee Code Annotated, there is hereby annexed to the City of Clarksville, Tennessee, and incorporated within the corporate boundaries thereof, the fol-

lowing described territory adjoining the present corporate boundaries:

Embracing those certain parts of Civil Districts 3, 7 and 8 of Montgomery County, Tennessee which includes New Providence, Tennessee, generally located north of Clarksville, Tennessee and more particularly described, to-wit:

Beginning at a point at the confluence of the Cumberland and Red Rivers which is the northwestern corner of the City Limits of the City of Clarksville, Tennessee; said point being the point of beginning, proceed northeasterly along the center line of Red River which is the northern boundary of city limits of Clarksville to a point which would be the intersection of the Center line of Red River and the eastern boundary extended of Lot 14, Property Map D7-4A; thence turn left and run in a northwesterly and westerly direction along said extended eastern boundary and northern boundary of said lot 14 to a point which is the intersection of the northern boundary of said lot 14 and the center line of Ford Street, New Providence, Tennessee; thence turn right and proceed in a northerly, westerly and northerly direction along the center line of said Ford Street to a point which would be the intersection of the center line of said Ford Street and the northern boundary, if extended of lot 27, Property Map D7-4; thence westerly, southerly and westerly along the northern property lines of said Lots 27 and 8, Lot Property Map D7-4 to a point which is 500′ east of the center line of Peacher's Mill Road; thence turn right and run in a northerly direction along a line which would be parallel to and 500′ more or less east of the center line of Peacher's Mill Road to a point where said line intersects the northeasterly right-of-way line of the Tennessee-Central Railway; thence running said right-of-way line in a westerly and north-

erly direction along the Tennessee-Central Railway as it meanders to a point where the said line intersects with the center line of Ringgold Creek; thence turn left and run in a westerly direction along the center line of said Ringgold Creek to a point which is the confluence of said Ringgold Creek and Little West Fork Creek; thence proceed in a southerly direction along the center line of Little West Fork Creek 900′ more or less to a point which is the southeastern corner of Fort Campbell at Little West Fork Creek; thence turn right and run westerly along the Southern Boundary of Fort Campbell to a point which is the northwestern corner of Lot 10, Montgomery County Property Map D3-5; thence turn left and run in a southerly direction along the western boundary of said Lot 10, 2600′ more or less to a point which would be the intersection of the said western boundary of said Lot 10, if extended and the South right-of-way line of Britton Springs Road; thence proceed along the south right-of-way line of Britton Springs Road to a point which is the intersection of the eastern property line of Lot 17, Montgomery County Property Map D3-5; thence southerly along said property line to the southeastern corner of Lot 17; thence in a southerly direction along a line which would extend from said Southeastern corner of Lot 17 to the northwestern corner of lot 36, Montgomery County property Map D3-7; thence in a southerly direction 2930′ more or less along the western property line of lots 36, 37 and 44, Montgomery County Property Map D3-7 to a point, thence easterly along the northern property line of Lot 43, of said Property Map, 150′ more or less to a point which is the northeast corner of said Lot 43; thence southwesterly along the western boundary of Lot 44 of said property map to a point which would be the intersection of said western property line if extended

and the center line of Garretsburg Road; thence southeasterly along the center line of said Garretsburg Road to a point which is the intersection of the center line of the LaFayette Road and Garretsburg Road; thence continue along the center line of LaFayette Road to a point which would be the intersection of the center line of LaFayette Road and the western property line of Lot 6, of extended Montgomery County Property Map D3-10; thence running in a southwesterly direction along the western property line of said Lot 6 to the southwestern corner of Lot 6; thence turn left in a southeastern direction proceed along the southern property line of said Lot 6 to a point which is the northwestern corner of Lot 8 Montgomery County Property Map D3-10; thence proceed in a southerly direction along the western boundary of said Lot 8 and the western boundary of Lot 2 and Lot 1 of Montgomery County Property Map D7-1 to a point which is the intersection of the western boundary of said Lot 1 and the northern property line of Lot 23, Montgomery County Property Map D8-3; thence turn right and run in a westerly direction along said northern boundary of said lot 23 to the northwest corner of said Lot 23; thence run in a southerly direction along the western property line of said lot 23 to the center line of U. S. Highway 79; thence proceed along the center line of U. S. Highway 79, 50′ more or less westerly along said center line to a point which is the intersection of said center line and the eastern right-of-way line of Dotsonville Road; thence along said eastern right-of-way line if extended 1950′ more or less to the southeastern corner of Lot 15.1, Property Map D8-3; thence turn left and proceed in a southeasterly direction 2110′ more or less along the southern boundaries of said Lot 15.1 and Lot 72 to a point which is the northwestern corner of Fairlane

Subdivision; thence in a southerly direction along the western boundary of said Fairlane Subdivision 1660' more or less to the southwestern corner of said Fairlane Subdivision and Oakland Heights Subdivision; thence along the southern boundaries of said Fairlane Subdivision to a point which is the intersection of the Boundary line between Civil Districts 7 and 8 and said southern property line; thence in a southeasterly direction along said Civil Districts Boundary to the center line of the Cumberland River; thence along the center line of said Cumberland River northeasterly to the confluence of the Red River and Cumberland River which is the point of beginning.

Section 2. This ordinance shall be effective from and after its passage, the public welfare requiring it.

/s/ Chas. W. Crow,
Mayor.

Attest:

/s/ Milton Cooley,
City Clerk.

Passed 1st reading: 11/5/64.

Passed 2nd reading: 12/3/64.

Insertion Date: Dec. 12, 1964.

Insertion No. 866.

## APPENDIX F.

**Tennessee Code Annotated, Sections 6-309, 6-310 and 6-318.**

**6-309. Annexation by Ordinance.**—A municipality when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole, provided said ordinance shall not become operative until thirty (30) days after final passage thereof.

Provided, however, that before any territory more than one-fourth (¼) square mile in area or having a population of more than five hundred (500) persons may be annexed under this section, the governing body of the municipality shall adopt a plan of service setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory proposed to be annexed. Provided, further, that before any such plan of service shall be adopted, it must have been submitted to the local planning commission, if there be such, for study and a written report, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed.

**6-310. Quo Warranto to Contest annexation ordinance.**—Any aggrieved owner of property lying within territory which is the subject of an annexation ordinance prior

to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with §§ 6-308—6-320 and chapter 28 of title 23, to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law.

If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits, shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, an order shall be issued vacating the same. In the absence of such finding an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same; otherwise, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final.

Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors above men-

tioned, including the necessity for, or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the said industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

6-318. **Municipal property and services.**—Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the state of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances. Provided, however, that any and all agreements entered into before March 8, 1955, relating to annexation shall be preserved. The annexing municipality, if and to the extent that it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, notwithstanding § 6-2607 or any other statute. Subject to such exclusive right any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators and subsection

(2) of § 23-501, shall not apply to any arbitration arising under §§ 6-308—6-320. The award so rendered shall be transmitted to the chancery court of the county in which the annexing municipality is situated, and thereupon shall be subject to review in accordance with §§ 23-513—23-515 and 23-518.

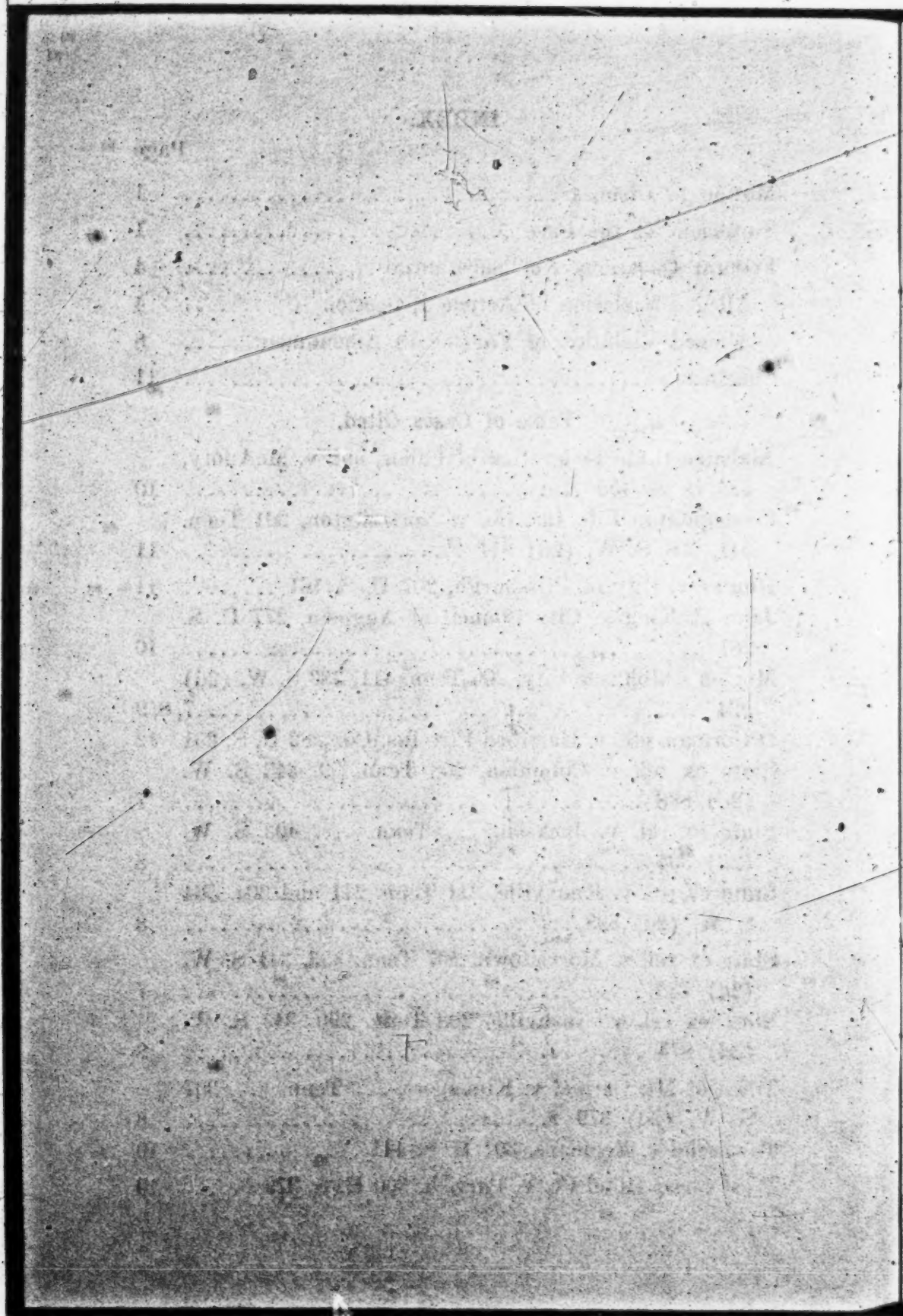
If the annexed territory is then being provided with a utility service by a state instrumentality which has outstanding bonds or other obligations payable from the revenues derived from the sale of such utility service, the agreement or arbitration award referred to above shall also provide (a) that the municipality will operate the utility property in such territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obligations, or (b) that the municipality will assume the operation of the entire utility system of such state instrumentality and the payment of such bonds or other obligations in accordance with their terms. Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations.

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No. 1182.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

STATE OF TENNESSEE, Ex Rel., Etc.,
Appellants,

vs.

CITY OF CLARKSVILLE, et al.,
Appellees.

On Appeal from Supreme Court of the State of Tennessee.

## APPELLEES' MOTION TO DISMISS.

Appellees move the Court, pursuant to its Rule 161 (b), to dismiss the appeal because it does not present a substantial federal question.

### STATEMENT OF THE CASE.

Lying south of Fort Campbell and immediately north of, and contiguous to, the City of Clarksville, Tennessee, is an unincorporated area of approximately ten square miles known as the New Providence Area. It is estimated that between eight thousand and nine thousand people reside in the area, devoted to residential, farming

and industrial uses; and many subdivisions are being developed in it. Appendix B, pp. 28-29.*

Since World War II Clarksville and the adjacent areas have experienced a phenomenal growth, and this is especially true of the New Providence area. In recent years, the area has become urban in nature. To meet some of the problems presented by this growth of population, utility districts have been formed to provide electric and water services. Within the corporate limits of the City of Clarksville there has also been a tremendous industrial and population growth, and any future growth of the City must be beyond its present city limits. Appendix A, p. 16.

The area has been the subject of two annexation studies in February, 1960, and October, 1964, both of which resulted in recommendations for annexation to the City of Clarksville. These studies included analysis of the service needs of the area as to water, sewage, gas, electricity, fire and police protection, street lighting, parks or recreational grounds, traffic control, zoning, governmental administration, and school services.

A plan of services made by experts employed by the City to make the study and to prepare a proposed plan of services was filed with the City of Clarksville in October, 1964. The report and plan of services were referred to the Regional Planning Commission and after review and analysis that body unanimously recommended the plan to the City Council.

A public hearing with respect to the proposed annexation was held by the City Council after published notice of the hearing at which advocates and opponents of annexation could express their views. Appendix B, pp. 29-30.

* All references to the Appendix are to the Appendices to the Jurisdictional Statement.

An ordinance annexing the New Providence area to the City of Clarksville was finally adopted in December, 1964. Appendix E, p. 41.

A statute of Tennessee relating to annexation of adjacent territory by a municipality provides that it may so annex upon its own initiative, when it appears that the prosperity of the city and the territory will be materially retarded and the safety and welfare of the inhabitants and property endangered. No favorable vote by the electorate of the area to be annexed is contemplated or required. The statute does require that there be a public hearing after notice and that prior to annexation the governing body of the city must adopt a plan of services setting forth the identification and projected timing of municipal services proposed to be extended into the territory. Appendix F, p. 46, Tennessee Code Annotated, Section 6-309.

The procedure required by the annexation statute was followed by the City of Clarksville in passing the challenged ordinance. Appendix A, p. 20.

The annexation statute further provides that any aggrieved owner of property in the annexed area may contest the validity of the annexation ordinance by suit filed within thirty days, and to facilitate judicial review, the statute further provides that the ordinance shall not become operative for thirty days after final passage. If a contest is duly filed, the annexation ordinance remains inoperative until the case is decided, including any appeal to the Supreme Court of Tennessee. Appendix F, p. 46, Tennessee Code Annotated, Sections 6-309 and 6-310.

Thus the annexation ordinance remained inoperative from its final passage in December, 1964, until after the Supreme Court of Tennessee denied petition to rehear on December 20, 1966. Within seven days after denial of said petition to rehear, contestants gave notice of appeal to this

Court and on January 3, 1967, a Judge of the Tennessee Supreme Court denied a motion to stay the judgment. Appendix D, p. 39.

No evidence was offered in the trial court with respect to any violation of Article I, Section 10 or the Fourteenth Amendment to the Constitution of the United States; there is no such evidence in the record here. However, there were literally hundreds of pages of evidence to show why annexation was necessary to promote the welfare of the annexed area and of the City. Appellants did not see fit to bring the evidence up as a part of the record in this Court, and not conceiving it to be the duty of the City by affirmative evidence to show that the ordinance was desirable, appellees have not made such evidence a part of the record. Hence, this case is here only upon the pleadings, the opinions and decrees entered below.

No question with respect to constitutional violations was raised by brief or argument in the trial court or by brief or argument in the Supreme Court of Tennessee; and, therefore, no such question is mentioned in the opinions of the trial court or of the Tennessee Supreme Court. Actually, the questions of constitutionality were raised for the first time by petition to rehear in the Tennessee Supreme Court, without explanation, citation of authority or supporting argument. Such questions were raised by the bare allegation of said constitutional violations. The opinion on petition to rehear responds concisely but fully to the contentions. Appendix C, p. 37.

## THE FEDERAL QUESTIONS ARE NOT SUBSTANTIAL.

### 1. Alleged Violation of Article I, Section 10 (Impairment of Contracts).

The Jurisdictional Statement asserts that the ordinance of annexation (No. 16-1964-65) violates Article I, Section

10 of the United States Constitution. This ordinance (Appendix E) is an annexation ordinance which contains nothing operative except a simple provision by which clearly described adjacent territory is annexed to the City of Clarksville, Tennessee, and incorporated therein. The City has done nothing else because the ordinance was rendered inoperative and has been kept inoperative by litigation promptly instituted by forty-one individuals, three companies and three public utility districts and continuously carried on since annexation.

In Tennessee, a public utility district is a quasi-municipal corporation created to furnish limited and specific utility services in an otherwise unincorporated area. When an area served by one or more utility districts is annexed to a municipality, it is the duty of the city and the utility district to attempt to reach agreement for conveyance to the city of all public functions, rights, duties, property, assets and liabilities. The statute does not indicate either one or the other has the duty to initiate negotiations. The utility districts have not requested or sought such negotiations. The City has believed that its request for negotiations would be useless if made to a utility district which continues to dispute legally that the area has been annexed and when without annexation the City has no right or duty to negotiate.

Failing of agreement, the parties have a statutory obligation to arbitrate; but the statute makes clear that if the city chooses it has the exclusive right to perform utility services in the area and also that the city must assume the bonds and other obligations of the utility district and fully protect the contract rights of the holders of bonds or other obligations. Appendix F, p. 48, Tennessee Code Annotated, Section 6-318.

In the present case the City and the utility districts have not yet negotiated. They could not properly nego-

tiate, at least until after petition to rehear was denied on December 20, 1966, because as the Supreme Court of Tennessee said (Appendix B, p. 32) "a municipality does not acquire the right or duty to negotiate or arbitrate with the utility furnishing services to an area sought to be annexed to the city until the annexation of such area is completed"; and the Court again said, Appendix B, p. 34, "such negotiations would have to be made after the annexation was completed."

All that has taken place up to date is that the City has annexed a contiguous area to the municipality. Any argument that the City may by some future action impair the rights of bondholders or other creditors of the utility districts is pure speculation and surmise. If the City at some future date should attempt any such thing, those aggrieved would have their judicial remedy then. The annexation statute expressly provides for the full preservation and protection of the contract rights vested in the holders of such outstanding bonds or other obligations. Appendix F, Tennessee Code Annotated, Section 6-318. It is not to be presumed in the absence of any evidence whatever that the City officials will attempt to violate their statutory duty, and if they do so a judicial remedy may then be applied for. The fact of annexation does not prevent or interfere with that remedy if the future so develops as to require it.

The contention that somehow contract rights have been impaired by a simple statute of annexation is conjectural and speculative. The City of Clarksville, if it chooses, may elect not to exercise the exclusive right to perform utility functions and the utility districts by contract with the City or by sufferance of the City, may continue indefinitely to perform such services, to receive their full and regular service fees therefor and to pay all their bonds and other obligations. What then becomes of the conjectural argument that there "has been" an impairment of the obligation of contracts?

The City of Clarksville may also elect (and probably will do so as its plan of services contemplates) to initiate proceedings to acquire the New Providence Utility District by negotiation, arbitration or judicial proceedings. By any method of acquisition the City must protect the contract rights vested in holders of outstanding bonds or other obligations. Appendix F, Tennessee Code Annotated, Section 6-318. If the City acquires the rights, duties, assets and liabilities of such utility district by agreement between the parties approved by a court of record or by judicial decree transferring such rights, duties, assets and liabilities, what then becomes of the argument about impairment of contracts?

Thus the only two alternatives available to the City of Clarksville leave the contract rights of creditors of the utility districts completely untouched, as the trial court contemplated, Appendix A, p. 25, and as the Tennessee Supreme Court expressly stated, Appendix B, pp. 30-31, and Appendix C, p. 37. The two utility districts, other than the New Providence Utility District, are situated mainly without the annexed area and partly within it. Doubtless for this reason the plan of services made no mention of them but left to future decision the matter of their acquisition. Again, however, the City must either leave them undisturbed in their operations or by negotiation, arbitration or judicial decree have the rights of the parties determined. Any agreement or judicial decree changing the *status quo* must fully protect the rights of creditors, as spelled out in Appendix F, Tennessee Code Annotated, Section 6-318.

This annexation is no different from many others by which cities of Tennessee have extended their boundaries. Among the cases showing this are **Morton v. Johnson City**, 206 Tenn. 411, 333 S. W. (2d) 924; **State ex rel. v. Morristown**, 207 Tenn. 593, 341 S. W. (2d) 733; **State ex**

rel. v. Columbia, 208 Tenn. 59, 343 S. W. (2d) 888; State ex rel. v. Nashville, 208 Tenn. 290, 345 S. W. (2d) 874; State ex rel. v. Knoxville, 211 Tenn. 271 and 304, 364 S. W. (2d) 898 and 912; Town of Mt. Carmel v. Kingsport, ... Tenn. ..., 397 S. W. (2d) 379; State ex rel. v. Jackson, ... Tenn. ..., 403 S. W. (2d) 304.

## 2. Alleged Violation of Fourteenth Amendment (Due Process of Law).

The contention that the annexation ordinance and the statute pursuant to which annexation was made deprive those holding bonds of utility districts of due process of law is also an insubstantial federal question. In the Jurisdictional Statement this contention of constitutional violation is urged only on behalf of bondholders. Incidentally, there is no evidence in the record here (nor was any such evidence offered below) that any bondholders as such was aggrieved or injured by annexation.

The argument for lack of due process is that the decisions of the Supreme Court of Tennessee impose the burden of showing that an ordinance is invalid upon the protestants, and that protestants automatically fail to carry this burden when they show only that the reasonableness or unreasonableness of the ordinance is "fairly debatable." Morton v. Johnson City, 206 Tenn. 411, and other later cases are cited by the Jurisdictional Statement.

Apparently, appellants insist that it is a violation of due process of law for a state to decline to have the courts hear evidence and decide whether the evidence preponderates for or against the desirability of the ordinance. Neither the Constitution of the United States nor the Tennessee Constitution requires this, and the annexation statute, Appendix F, as authoritatively construed in the above cited Morton case, does not require it.

The case of **Morton v. Johnson City**, 206 Tenn. 411, is the leading case in Tennessee construing this annexation statute and its principles have been adhered to in later cases. In the **Morton** case, a city annexed adjacent territory and in judicial contest of the annexation ordinance the trial court held the ordinance invalid. On appeal, the Tennessee Supreme Court reversed and sustained the ordinance. The Court's reasoning was as follows:

The Legislature has power to annex subject to constitutional limitation and this power may be delegated to municipal governing bodies, as was done by Tennessee Code Annotated, Section 6-309. When an ordinance is judicially challenged as invalid and it has been adopted in compliance with the statute, the court does not substitute its discretion or judgment as to the advisability or propriety of the annexation for that of the legislative body. Judicial review of reasonableness is confined to a determination of whether there exists a sufficient showing of reasonableness by those defending the ordinance to make that question "at least a fairly debatable one". According to the **Morton** case, the annexation statute permits judicial review under the following principle:

> ". . . the correct legal principle to apply is what is said in the outset of this opinion, that is if it is a fairly debatable question as to whether or not the ordinance is reasonable or unreasonable the courts certainly are not going to take any hand in it one way or the other" (206 Tenn. 426).
>
> "Suffice it to say we have read this evidence pro and con and think that it is a fairly debatable question. It is so even that unquestionably the courts if they got into the matter would be getting into the legislative feature of it and not the judicial feature. When the evidence is thus evenly divided on the reasonableness or unreasonableness it is perfectly

obvious that those opposing and those in favor of, whether it is reasonable or unreasonable, are so expressing themselves in a political or a legislative matter and not in such a matter as it constitutes evidence that should or would control a judiciary" (206 Tenn. 429).

A municipal ordinance for purpose of review by this Court as to constitutionality is not different from a state statute. Appellants here ask review of the annexation ordinance under 62 Stat. 929, 28 U. S. C., Sec. 1257 (2), "where is drawn in question the validity of a statute of any state. . . ." A city ordinance is a state statute within the meaning of the quoted provision. **John P. King v. City Council of Augusta,** 277 U. S. 267. This Court accepts the state court's interpretation of a state statute and the question is whether the statute or ordinance, as construed by the state supreme court, violates the Constitution.

Where a state statute is assailed as unconstitutional this Court will assume the existence of any state of facts which would sustain the statute. **Alabama State Federation of Labor, etc. v. McAdory,** 325 U. S. 450. The presumption favors the validity of a state statute and this Court will not annul it unless it is palpably in excess of legislative power. **West Coast Hotel Co. v. Parrish,** 300 U. S. 379. Also, the legislative body acting within its sphere is presumed to know the needs of its people. **Townsend v. Yeomans,** 301 U. S. 441.

In the case at bar, the trial court and the Tennessee Supreme Court did not assume the existence of facts to sustain the statute. Evidence pro and con was offered and received as to the reasonableness of annexation. Having decided that the reasonableness of annexation was a debatable question, the court said it "cannot weigh the evidence and determine where the preponderance of

the evidence lies, but can only decide whether or not a debatable question is presented." Appendix A, p. 21. Thus the Tennessee courts gave the protestants by virtue of Tennessee Code Annotated, Section 6-310 (Appendix F) as authoritatively construed, greater rights of judicial review than they would have if the annexation had been an act of the State Legislature. In such case, the courts will not inquire into the policy of legislation, if there is a plausible reason for enacting such legislation. **Cosmopolitan Life Ins. Co. v. Northington**, 201 Tenn. 541, 300 S. W. (2d) 911.

Instead of the strict rule constitutionally permissible, the annexation statute as construed (1) requires a public hearing for those opposed to annexation; (2) requires a plan of services for the annexed area submitted to the local planning commission with written report thereon; (3) provides for suspension of the annexation ordinance if judicially challenged until the appellate court is given an opportunity on appeal to annul it; and (4) requires annulment of the ordinance if in a judicial contest there is not sufficient evidence as to reasonableness of annexation to make that question "fairly debatable."

In the Jurisdictional Statement, p. 9, it is said ". . . enlargement of cities by annexation of additional territory is exclusively a State matter . . ." This concession states an obviously correct principle in view of **Hunter v. City of Pittsburgh**, 207 U. S. 161 (1907) and many later cases. We believe this principle disposes of the present case and does not need further argument.

## CONCLUSION.

In conclusion, we emphasize that appellants are not asking this Court to declare unconstitutional a statute as a violation of Article I, Section 10 (obligation of contracts clause) or of the Fourteenth Amendment (due process of

law clause) on the basis of evidence introduced at the hearing or preserved in the record before this Court. Without bringing up the evidence as part of the record, they ask such result on the basis of speculation, surmise and assumptions as to what may hereafter happen. The presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. **O'Gorman, etc. v. Hartford Fire Ins. Co.**, 282 U. S. 251. The federal questions here sought to be raised without any factual foundation are clearly not substantial.

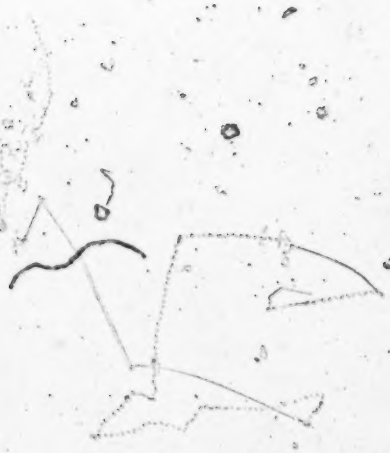
For the foregoing reasons, it is respectfully submitted that the motion to dismiss should be sustained.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

## TENNESSEE EX REL. NEW PROVIDENCE UTILITY DISTRICT ET AL. *v.* CITY OF CLARKSVILLE ET AL.

APPEAL FROM THE SUPREME COURT OF TENNESSEE, MIDDLE DIVISION.

No. 1182. Decided May 22, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.